

King County Contract No. _____
Federal Taxpayer ID No. _____

Department/Division: **Community and Human Services/Housing and Community Development**

Agency: _____

Project Title: _____

Contract Amount: _____ Fund Code: _____

Contract Start Date: _____ Contract End Date: _____

Termination Date (where applicable): _____

KING COUNTY HOUSING AND COMMUNITY DEVELOPMENT CONTRACT—2007

THIS CONTRACT is entered into by KING COUNTY, a political subdivision of the State of Washington (the "County"), and _____, (the "Agency", a Washington nonprofit corporation), whose address is _____.

WHEREAS, the County is an Urban County recipient of Community Development Block Grant Program (CDBG) funds under the Housing and Community Development Act of 1974, Public Law 93-383 as amended (the "HCD Act"); HOME Investment Partnership Program (HOME) funds under the National Affordable Housing Act of 1990 Public Law 101-625 as amended (the "NAHA"). The County allocates Housing Opportunity Funds (HOF), Regional Affordable Housing Program (RAHP) funds, and Homeless Housing and Services Funds (2163) to low-income housing development capital and/or service projects and Current Expense ("CX") funds to housing and community development projects in accordance with adopted County ordinances. The County uses CDBG, HOME, HOF and/or CX funds for the purpose of carrying out eligible community development and housing activities under the HCD Act, the NAHA, regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) at 24 Code of Federal Regulations (CFR) Part 570, 24 CFR Part 92, 24 CFR Part 576, and adopted County Ordinances. (All CFR references can be found at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. All King County code references can be found at <http://www.metrokc.gov/mkcc/Code/index.htm>);

WHEREAS, an Urban County CDBG Consortium has been established by CDBG interlocal cooperation agreements ("CDBG ICAs") or joint agreements between the County and certain municipal corporations (Consortium Cities) within the County covering program years 2006-2008. The CDBG ICAs specify allocation of CDBG funds by the County to those participating jurisdictions for use in accordance with the County Consolidated Housing and Community Development Plan ("HCD Plan"). The HCD Plan has been adopted by the King County Council, accepted by participating jurisdictions and approved by HUD;

WHEREAS, a HOME Consortium has been established by HOME ICAs between the County and certain HOME Consortium Cities covering 2003-2005, extended through program year 2008, the terms of which specify allocation of HOME funds by the County for use in accordance with the HCD Plan which has been adopted by the King County Council, accepted by participating jurisdictions and approved by HUD;

**This form is available in alternate formats upon
request for persons with disabilities.**

WHEREAS, the County desires to award certain funds to the Agency for use as described in this Contract and as authorized by County ordinance, for the purpose of implementing eligible activities as applicable under the HCD Act, the NAHA, HUD regulations, State laws and/or adopted County ordinances;

WHEREAS, it is appropriate and mutually desirable that the Agency be designated by the County to undertake such eligible activities, so long as the requirements of the HCD Act, NAHA, HUD Regulations, State law and County ordinances are adhered to, as provided for herein;

WHEREAS, the purpose of this Contract is to provide for cooperation between the County and the Agency, as the parties in this Contract, in implementing such eligible activities under the laws and regulations that pertain to the funds awarded in this Contract;

WHEREAS, the parties are authorized and empowered to enter into this Contract by one or more of the following: County ordinance, the HCD Act, the NAHA, RCW Chapter 39.34, RCW Chapter 35.21.730 et seq., by the Constitution and the enabling laws of the State of Washington;

NOW, THEREFORE, for and in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually covenant and agree to abide by the provisions of this Contract.

KING COUNTY:

AGENCY:

FOR

King County Executive

Signature

Date

NAME (Please type or print)

Date

Approved by DCHS Director

Approved as to Form: September 8, 2006

OFFICE OF THE KING COUNTY
PROSECUTING ATTORNEY

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EXHIBITS ATTACHED HERETO

I				
II			\$	
III			\$	
IV			\$	
V			\$	
VI			\$	
VII			\$	
VIII			\$	

I. SCOPE OF CONTRACT AND INCORPORATION OF EXHIBITS

A. Scope

The Contract between the parties shall consist of the signature page, each Program/Project Exhibit incorporated into the Contract, all matters and laws incorporated by reference herein, and any written amendments made in accordance with the provisions contained herein. The exhibits attached to this Contract as Exhibits through are hereby incorporated by this reference. This Contract supersedes any and all former agreements regarding projects described in the attached Project/Program Exhibit(s). If there is a conflict between any of the language contained in this Contract and any of the language contained in any Project/Program Exhibit in this Contract, the language in this Contract shall control, unless the parties affirmatively agree to the contrary in a writing that has been reviewed and approved by the King County Prosecuting Attorney's Office. This Contract shall govern both: (1) Service Projects (human service, planning, program administration and micro-enterprise or supportive services for the homeless); and (2) Capital Projects (acquisition, improvement, and rehabilitation of real property and construction or reconstruction of public infrastructure). The two types of activities may be included in one Contract as separate Project/Program Exhibit(s) of Services.

B. Mandatory Certifications

The Agency certifies that it shall comply with the provisions of Sections XIX, XXIII, XXVI and XXIX of this Contract. If the Agency is a municipal corporation (other than King County) or agency of the State of Washington, King County Code chapters 12.16, 12.17 and 12.18 do not apply to the Agency, but would apply to any subcontractor of the Agency.

C. Contact Person

King County and the Agency shall each designate a contact person for each Project/Program Exhibit incorporated in this Contract. All correspondence, reports and invoices shall be directed to the designated contact person. This provision does not, however, supplant or override Section XXXIII Notices.

D. Federal Funds

The term "federal funds" as used herein means CDBG funds and/or HOME funds. The specific types of funds provided under this Contract are specified in the attached Project/Program Exhibit(s).

E. Environmental Review

This section applies to all projects using federal funds that are not exempt under 24 CFR Part 58. Notwithstanding any provision of this contract, the parties hereto agree and acknowledge that this contract does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt of a release of funds from HUD under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned upon King County's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. The agency shall not spend any funds on physical or choice-limiting actions, including

property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. Violation of this provision shall result in the denial of any funds under this contract.

Capital Projects using federal funds shall also comply with subsections F, G, H and I.

F. Environmental Policy Act

The County retains environmental review responsibility for purposes of fulfilling requirements of the National Environmental Policy Act as implemented by HUD Environmental Review Procedures (24 CFR Part 58) and the Federal laws and authorities identified therein. The Agency shall be solely responsible for the cost of compliance with all such Federal laws and authorities including the cost of preparing plans, studies, reports and the publication of notices that may be required. The Agency and its contractors shall not take any actions inconsistent with 24 CFR Part 58.

G. National Flood Insurance

The use of CDBG and HOME funds for acquisition or construction purposes in identified special flood hazard areas shall be subject to Agency mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub L. 93-237).

H. Lead Based Paint

The Agency shall comply with the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at 24 CFR Part 35, subparts A, B, J, K, and R. Generally, these laws prohibit the use of lead-based paint (whenever funds under this Contract are used directly or indirectly for construction, rehabilitation, or modernization of residential structures); require elimination of immediate lead-based paint hazards in residential structures; and require notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.

I. Environmental Justice

The Agency shall comply with Presidential Executive Order 12898 requiring identification and mitigation, as appropriate, of disproportionately high and adverse human health or environmental impacts of programs, policies and activities on minority and/or low-income populations.

II. DURATION OF CONTRACT

The terms of this Contract shall be in effect from the Start Date (as defined in the Project/Program Exhibit(s)) or the date of execution of this Contract, whichever is earlier, and shall terminate on the Termination Date specified in each Project/Program Exhibit, unless extended to a later date or terminated earlier, pursuant to the terms and conditions of the Contract.

III. TERM OF COMPLIANCE FOR CAPITAL PROJECTS

The Agency shall own and operate the project during the Compliance Period as defined in the Program/Project Exhibit.

IV. COMPENSATION AND METHOD OF PAYMENT

The County shall reimburse the Agency only for the approved activities specified in each Project/Program Exhibit and the reimbursement amount shall not exceed the amount specified in each Project/Program Exhibit. Reimbursements will be payable in the following manner.

A. Start Date and End Date

Start Dates and End Dates for individual projects shall be specified in each Project/Program Exhibit, except as provided in each Program/Project. Costs incurred before the Start Date will not be reimbursed. Costs incurred after the End Date will not be reimbursed.

B. Submission of Invoices, Supporting Documentation and Reports

The Agency shall submit an invoice, supporting documentation for costs claimed in the invoice and all reports as specified in each Project/Program Exhibit or the County may not process the invoice. Supporting documentation for costs claimed in the invoice includes, but is not limited to, purchase orders and bills. The County shall initiate authorization for payment to the Agency not more than 30 days following the County's approval of a complete and correct invoice, supporting documentation and reports.

C. Final Invoice for Service Projects

The Agency shall submit its final invoice for each Project/Program Exhibit providing funding for Service Projects within seven business days after the End Date. The Agency shall submit all outstanding reports for each Project/Program Exhibit providing funding for Service Projects within 30 business days after the End Date.

If the Agency's final invoices, supporting documentation, and reports are not submitted by the last date specified in this subsection, the County shall be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice; provided, however, the County may elect to pay any invoice that is not submitted in a timely manner.

D. Final Invoice for Capital Projects

Unless provided otherwise in the Project/Program Exhibit(s), the Agency shall submit its final invoice, supporting documentation, and all outstanding reports for each Project/Program Exhibit providing funding for Capital Projects before the End Date specified in the Project/Program Exhibit(s).

If the Agency's final invoices, supporting documentation, and reports are not submitted by the date specified in this subsection, the County shall be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice; provided, however, the County may elect to pay any invoice that is not submitted in a timely manner.

E. Unspent County Funds

After the End Date specified in each Project/Program Exhibit, for individual projects covered by this Contract, the County shall recapture any unexpended funds encumbered under this contract.

Projects using federal funds shall also comply with the following subsections F, G, H and I.

F. Municipal Corporations or State Public Agencies

If the Agency is a municipal corporation or an agency of the State of Washington, costs for which the Agency requests reimbursement shall comply with the policies, guidelines, and requirements of OMB Circular No. A-87, "Cost Principles For State, Local and Indian Tribal Governments" and the sections of 24 CFR Part 85 "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" identified at 24 CFR § 570.502(a) Applicability of Uniform Administrative Requirements, unless otherwise provided in the Project/Program Exhibit(s).

G. Nonprofit Corporations

If the Agency is a nonprofit corporation, costs for which the Agency requests reimbursement shall comply with, unless otherwise provided in the Project/Program Exhibit(s), the policies, guidelines and requirements of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations," and the sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, identified at 24 CFR § 570.502 (b), Applicability of Uniform Administrative Requirements.

H. Excess Federal Funds

CDBG and/or HOME funds on hand shall not exceed \$5,000 if retained beyond three days unless written approval is received from the County. Any reimbursement in excess of the amount required shall be promptly returned to the County.

I. Program Income

The Agency shall report all CDBG and HOME Program Income, as defined in 24 CFR §§ 92.2, 92.503 and 570.504(c) and in the ICAs, generated under this Contract for the purposes specified herein or generated through the project(s) funded under this Contract. Program Income is to be reported to the County. Program income shall be returned to the County unless the County specifies that it may be retained by the Agency. If the County authorizes the Agency to retain the Program Income to continue or benefit a project(s), the Agency shall comply with all provisions of this Contract in expending the funds. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to Section II or Section XV.

V. **BUDGET**

The Agency shall apply the funds received from the County under this Contract in accordance with each Project/Program Exhibit including a line item budget, if applicable, set forth in each Project/Program Exhibit. The Agency shall request in writing prior approval

from the County to revise the line item budget when the cumulative amount of transfers from a line item in any Project/Program Exhibit is expected to exceed ten percent of that line item. Supporting documents are necessary to fully explain the nature and purpose of the revision, and must accompany each request for prior approval. All budget revision requests in excess of ten percent of a line item amount shall be reviewed and approved or denied by the County in writing.

VI. INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Agency shall establish and maintain a system of accounting and internal controls that comply with applicable, generally accepted accounting principles, financial and governmental reporting standards as prescribed by the appropriate accounting standards board.

VII. MAINTENANCE OF RECORDS

A. Scope of Records

The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records specified in each Project/Program Exhibit or otherwise deemed necessary by the County to ensure proper accounting for all Contract funds and compliance with this Contract.

B. Time for Retention of Records

Records required to be maintained in subsection A above shall be maintained for a period of six years after the termination date, unless a different period for records retention is specified in the Project/Program Exhibit.

C. Location of Records/Notice to County

The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten working days of any such relocation.

Projects using federal funds shall also comply with subsections D, E, F, G, H, I, J, K and L.

D. Federal Exceptions to Retention Requirements

Exceptions to the six year retention period are as follows: (1) Records that are the subject of audit findings, litigation, or claims shall be retained until such findings, litigation or claims have been resolved; and (2) The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer at the direction of the County.

E. Financial Management Records

Financial records shall identify adequately the source and application of funds for activities within this Contract, in accordance with the provisions of 24 CFR § 85.20 and the U. S. Office of Management and Budget ("OMB") Circular A-87 for governmental agencies, 24 CFR § 84.21 and OMB Circular A-122 for Nonprofit Corporations. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

F. Tenant Notification and Relocation Records

If the Agency is acquiring property with existing tenants, Agency record keeping for tenant notification and relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The "Uniform Relocation Act"), and regulations at 49 CFR Part 24. Indication of the overall status of the relocation workload and a separate relocation record for each person, business, organization and farm operation displaced or in the relocation workload must be kept.

G. Acquisition Records

If the Agency is using funds under this Contract for property acquisition, the Agency must maintain a separate acquisition file for each acquisition process documenting compliance with Uniform Relocation Act regulations at 49 CFR Part 24, including a notice of voluntary sale.

H. Beneficiary Records

The Agency agrees to maintain racial, ethnic, disability status, single head of household, household income, and gender data showing the extent to which these categories of persons have participated in, or benefited from, the activities carried out under this Contract if required in a Project/Program Exhibit.

I. Labor Standards

If the Agency is using funds under this Contract for construction work, the Agency shall maintain records documenting compliance by all construction contractors with the labor standards as required under 24 CFR § 570.603 for CDBG funds and 24 CFR § 92.354 for HOME funds.

J. Other Construction Records

The Agency and all of its contractors shall maintain records and information necessary to document the level of utilization of state certified small, minority, and women-owned businesses, and other businesses as subcontractors and suppliers under this Contract. The Agency shall also maintain all written quotes, bids, estimates or proposals submitted by the contractor and any and all businesses seeking to participate in this Contract. The Agency shall make such documents available to the County for inspection and copying upon request.

K. Employment Records

If the Agency is a municipal corporation or an agency of the State of Washington, it agrees to maintain the following data for each of the Agency's operating units funded in whole or in part with CDBG funds provided under this Contract:

1. Employment data with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and
2. Documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap.

L. Records Regarding Remedy of Past Discrimination

The Agency shall maintain documentation of the affirmative action measures the Agency has taken to overcome prior discrimination if a court or HUD has found that the Agency has previously discriminated against persons on the grounds of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds pursuant to 24 CFR Part 121.

VIII. AUDITS

A. Nonprofit Corporations

1. The Agency shall provide to the County a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when requested.
2. The Agency shall have an independent audit conducted of its financial statement(s) and condition, which shall comply with the requirements of generally accepted auditing standards; Government Accountability Office Standards for Audits of Governmental Organizations, Programs, Activities, and Functions; and Office of Management and Budget Circulars A-21, A-87, A-102, A-122 and A-133 as amended and as applicable. The County in its sole discretion may waive some or all of these requirements upon the written request of the agency. The Agency shall provide to the County a copy of the audit report including any management letter or official correspondence submitted by the auditor, its response and corrective action plan for all findings and reportable conditions contained in its audit. These documents shall be submitted not later than six months subsequent to the end of the Agency's fiscal year.

B. Municipal Corporations

If the Agency is a municipal corporation in the state of Washington, it shall submit to the County a copy of its annual report of examination/audit, conducted by the Washington State Auditor, within 30 days of receipt, which submittal shall constitute compliance with subsection VII.B.

C. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number for the CDBG Program is 14.218. The CFDA number for the HOME Program is 14.239. Additional federal and/or state audit or review requirements may be imposed on the County, and the Agency shall be required to comply with any such requirements.

IX. EVALUATIONS AND INSPECTIONS

A. Right of Access to Facilities for Inspection of Records

The Agency shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the activities funded under this Contract. The County shall give advance notice to the Agency in the case of fiscal audits to be conducted by the County.

B. Time for Inspection and Retention

The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this Contract and six years after the termination date, unless a different period is specified in the Project/Program Exhibit or a longer retention period is required by law.

C. Agreement to Cooperate

The Agency agrees to cooperate with the County or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

X. PROPERTY MANAGEMENT

The Agency shall engage in sound property and program management practices and at all times operate and maintain the Premises in a manner which fully complies with all applicable federal, state, and local laws, statutes, rules and regulations covering health and safety issues in order to provide decent, safe and sanitary housing, as now in effect or as may be hereafter amended. The Agency specifically agrees to comply and pay all costs associated with achieving such compliance without any notice of requirement or requirements from the County, and that the County does not waive this section by giving notice of demand for compliance in any instance.

The Agency shall throughout the term of this Contract, without cost or expense to the County, keep and maintain the Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean and sanitary condition, and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair.

If, after 30 days notice from the County, the Agency fails to maintain or repair any part of the Premises or any improvement, landscaping, fixtures or equipment thereon, the County may, but shall not be obligated to, enter upon Premises and perform such maintenance or repair and the Agency agrees to pay the costs thereof to the County upon receipt of a written demand.

XI. TAXES AND LICENSES

The Agency shall pay throughout the term of this Contract, all applicable taxes, and all licenses and excise fees covering the ownership and operations of the Premises.

XII. PROCEDURE IN THE EVENT OF CASUALTY/CONDEMNATION

A. In the event that all or any portion of the Premises is taken or conveyed as a result of any condemnation proceeding or damaged as a result of any casualty, the County and the Agency agree that the proceeds of any condemnation or casualty affecting the Premises shall be made available for the repair or restoration of the real property if the County and the Agency in their reasonable judgment agree that

1. Repair or restoration of the real property is feasible and that sufficient funds are available to complete such work;

2. After the completion of work, the real property can be feasibly operated within the restrictions and requirements of the Project/Program Exhibit; and
 3. More than two years remain after the completion of the work until the end of this Contract.
- B. The County and the Agency shall meet as necessary to discuss in good faith the rebuilding or repair of the real property and reach a decision with respect thereto within 60 days after the occurrence of the casualty or condemnation. If the parties cannot in good faith agree to repair or restore the real property as provided above, then any proceeds of the casualty or condemnation, within 60 days of demand, shall be paid first to satisfy the County's lien. The balance of the proceeds shall be paid to the Agency.

XIII. CORRECTIVE ACTION

A. Default by Agency

If the County determines that a breach of contract has occurred because the Agency failed to comply with any material terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services agreed to in any Project/Program Exhibit attached hereto, and if the County deems said breach to warrant corrective action, the following sequential procedure shall apply.

1. The County shall notify the Agency in writing of the nature of the breach.
2. The Agency shall submit a plan describing the specific steps being taken to correct the specified deficiencies (the "corrective action plan"). The corrective action plan shall be submitted to the County within ten business days from the Agency's receipt of the County's notice under this Section. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which completion date shall not be more than 30 days from the date the County receives the Agency's corrective action plan, unless the County, in its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions.
3. The County shall notify the Agency, in writing of the County's determination as to the sufficiency of the Plan. The County shall have sole discretion in determining the sufficiency of the Agency's corrective action plan.

B. Termination of Contract

In the event that the Agency does not respond within the appropriate time with a corrective action plan, or the Agency's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section XV.B.

C. County Withholding of Payment

In addition, the County may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed.

D. No Waiver of Other Remedies

Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XV or other remedies authorized by law.

XIV. ASSIGNMENT

The Agency shall not assign, transfer or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the prior written consent of the County. Additional terms for County consent to such assignment, transfer or subcontract may be described in a Project/Program Exhibit. Said consent must be sought in writing by the Agency not less than 15 business days prior to the date of any proposed assignment, transfer or subcontract. The Agency shall deliver to the County with its request for consent, such information regarding the proposed assignee, transferee or subcontractee, including its proposed mission, legal status, and financial and management capabilities as is reasonably available to the Agency. Within 15 days after such request for consent, King County may reasonably request additional available information on the proposed assignee, subcontractee or transferee. If the County shall give its consent, this Section shall nevertheless continue in full force and effect. Any assignment, transfer or subcontract without prior County consent shall be void.

XV. TERMINATION

A. Termination for Convenience

1. This Contract may be terminated by the County without cause, in whole or in part, prior to the termination date specified in the Project/Program Exhibit, by providing the Agency 30 days advance written notice of the termination.
2. In addition to the foregoing, if expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in the Project/Program Exhibit, the County may, upon written notification to the Agency, terminate this Contract in whole or in part.
3. If the Contract is terminated as provided above: (1) the County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) the Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.

B. Termination for Cause

1. The County may terminate this Contract, in whole or in part, upon seven days advance written notice to the Agency in the event: (1) the Agency materially breaches any duty, obligation, or service required pursuant to this Contract and such breach has not been cured by a corrective action plan acceptable to the County; or (2) the duties, obligations, or services required herein become impossible, illegal or not feasible.
2. If the County terminates the Contract pursuant to this section, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.
3. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal

mismanagement, the Agency shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Agency by the County.

4. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section II, the County may, upon written notification to the Agency, terminate this Contract in whole or in part.
5. If the Contract is terminated as provided in this Subsection: (1) the County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) the Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.
6. Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract shall terminate at the close of the current appropriation year.

C. Waiver

Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract at law or in equity that either party may have in the event that the obligations, terms and conditions set forth in this Contract are breached by the other party.

XVI. FUTURE SUPPORT

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

XVII. HOLD HARMLESS AND INDEMNIFICATION

A. Agency is an Independent Contractor

In providing services under this Contract, the Agency is an Independent contractor and neither it, nor its officers, agents or employees, are employees of the County for any purpose. The Agency shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits or taxes by, or on behalf of, the Agency, its employees, and/or others by reason of this Contract. The Agency shall protect, indemnify, and hold harmless the County, its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Agency's failure to pay any such compensation, wages, benefits or taxes, and/or (2) the supplying to the Agency of work, services, materials or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.

B. Agency Agreement to Repay

The Agency further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination Sections.

C. Agency Indemnification of County

1. The Agency shall protect, defend, indemnify and hold harmless the County, their officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Agency, its officers, employees, contractors, subcontractors and/or agents, in its performance and/or non-performance of its obligations under this contract. The Agency agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Agency, by mutual negotiation, hereby waives, as respects to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of RCW, Title 51. In the event the County incurs any judgment, award and/or cost arising there from including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Agency. To the extent that an Agency subcontractor fails to satisfy its obligation to defend and indemnify King County, as detailed in Part I, Section XIV, the Agency shall protect, defend, indemnify and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards or damages arising out of, or in any way resulting from the negligent act or omissions of the Agency's contractor/subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract.
2. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice.
3. The Agency agrees not to perform any acts that include use or transfer of software, book, document, report, film, tape, or sound reproduction, or material of any kind, delivered hereunder, that constitutes an infringement of any copyright, patent, trademark, trade name and/or otherwise results in unfair trade practice. The Agency agrees to indemnify the County for any harm resulting from unfair trade practices.
4. The provisions in this section shall survive the termination and/or duration of the contract term.
5. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

XVIII. INSURANCE REQUIREMENTS—GENERAL

A. Insurance Required

By the date of execution of this Contract, the Agency shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Agency, its agents, representatives, employees and/or contractor/subcontractors. The Agency or contractor/subcontractor shall pay the costs of such insurance. The Agency shall furnish separate certificates of insurance and policy endorsements from each contractor/subcontractor as evidence of compliance with the insurance requirements of this Contract.

The Agency is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Agency, its agents, employees, officers, contractor/subcontractors, providers and/or provider subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Contract.

Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Contract.

B. Risk Assessment by Agency

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Agency. The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope of Insurance. Coverage shall be at least as broad as the following:

1. General Liability

Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.

2. Professional Liability, Errors and Omissions Coverage

In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided. "Professional Services", for the

purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require a professional standard of care.

3. Automobile Liability

Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or “Other States” state law.

5. Stop Gap/Employers Liability

Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.

6. Property Insurance

Insurance Services Office form number (CP 00 10) covering **BUILDING AND PERSONAL PROPERTY COVERAGE** and Insurance Services Office form number (CP 10 30) **CAUSES OF LOSS – SPECIAL FORM** or project appropriate equivalent.

7. National Flood Insurance

The use of CDBG and HOME funds for acquisition or construction purposes in identified special flood hazard areas shall be subject to Agency mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub L. 93-237).

7. Builder's Risk/Installation Floater

The Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by King County, whichever is longer, “All Risk” Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss—Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for one hundred percent of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of King County, Owner, Contractor and subcontractors of all tiers with King County listed as a loss payee.

D. Minimum Limits of Insurance—Capital Projects

The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

2. Professional Liability, Errors, and Omissions: \$1,000,000, Per Claim and in the Aggregate.
3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.
4. Workers' Compensation: Statutory requirements of the state of residency.
5. Stop Gap /Employers Liability: \$1,000,000.
6. Property Insurance: One hundred percent replacement value of funded structure.

E. Minimum Limits of Insurance—Building Construction Period

Prior to commencement of building construction and until construction is complete and approved by the Agency, the Agency shall cause the construction contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Contract. The Agency and County shall be named as additional insureds on liability policies except Workers Compensation and Professional Liability, and as Named Insureds on Builders Risk policies. The cost of such insurance shall be paid by the Agency and/or any of the Agency's contractors/ subcontractors. The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
4. Builder's Risk Insurance: One hundred percent replacement cost value.
5. Workers Compensation: Statutory requirements of the State of residency.
6. Stop Gap or Employers Liability Coverage: \$1,000,000.

F. Minimum Limits of Insurance—Services Agreements: The Agency shall maintain limits no less than the following:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 in the aggregate.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
4. Workers Compensation: Statutory requirements of the State of Residency.

5. Stop Gap or Employers Liability Coverage: \$1,000,000.

Paragraphs G, H, I, J, K and L below apply to Capital Projects, Construction Projects and Services Contracts.

G. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Agency's liability to the County and shall be the sole responsibility of the Agency.

H. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. All Liability Policies except Professional and Workers Compensation.
 - a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Agency/Contractor in connection with this Contract. Such coverage shall include Products-Completed Operations.
 - b. To the extent of the Agency's/Contractor's negligence, the Agency's/Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Agency's insurance or benefit the Agency in any way.
 - c. The Agency's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. Property Coverage Policies
 - a. The County shall be added to all Property Coverage Policies as a loss payee as its interests may appear.
 - b. The County shall be added as a Named Insured as their interests may appear to all Builders Risk policies.
3. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County.

I. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

J. Verification of Coverage

The Agency shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

K. Subcontractors

The Agency shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Agency is relying on the insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract, then such requirements and documentation shall be subject to all of the requirements stated herein.

L. Municipal or State Agency Provisions

If the Agency is a municipal corporation or an agency of the state of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be provided for the self-insured requirements and attached hereto and be incorporated by reference and shall constitute compliance with this Section. If the certificate of self-insurance does not cover all mandatory requirements, the Agency shall provide separate certificates and endorsements that document coverage.

XIX. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. Domestic Partner Benefits (Non-discrimination in Benefits)

King County's Domestic Partner Benefits Ordinance 14823 prohibits the award of contracts valued at \$25,000 or more to firms that discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners. To be eligible for award, contractors shall comply fully with the ordinance's provisions. As a condition of execution of this Contract, the Agency shall provide a Worksheet and Declaration Form as provided by the County. The compliance forms and Ordinance 14823 are available online at: <http://www.metrokc.gov/procurement/formseb.aspx>.

B. Nondiscrimination in Employment Provision of Services

During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in

the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapters 12.16 and 12.17 are incorporated herein by reference, and to the extent applicable such requirements shall apply to this Contract.

C. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Agency shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Agency shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

D. Compliance with Laws and Regulations

The Agency shall comply fully with all applicable federal, state and local laws, ordinances, Presidential Executive Orders and regulations that prohibit discrimination. These laws include, but are not limited to, KCC Chapter 12.17; RCW Chapter 49.60; Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(a) et seq.; the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; and the Restoration Act of 1987. The Agency shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

E. Small Business and Minority and Women Business Enterprise Opportunities

King County encourages the Agency to utilize small businesses, including Minority-owned and Women-owned Business Enterprises ("M/WBEs") in County contracts. The County encourages the Agency to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs.

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform small businesses and other firms of contracting and subcontracting opportunities.
2. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to these firms capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
4. Establishing delivery schedules, where the requirements of this Contract permit, that encourages participation by small businesses, including M/WBEs.
5. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, specifications and requirements of the Contract.

6. Using the services of available community organizations, contractor groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. Contact OMWBE office at 360-753-9693 or on-line through the web site at www.wsdot.wa.gov/omwbe/.

F. Equal Employment Opportunity

The Agency shall implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.

G. Fair Employment Practices

1. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and, to the extent applicable, such requirements apply to this Contract. In particular, and without limitation, these requirements specify that during the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:
 - a. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
 - b. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
 - c. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupation qualification;
 - d. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
 - e. Employer, employment agency or a labor organization to retaliate against any person because that person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
 - f. publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC 12.18.030(C), or to segregate and separately designate advertisements as applying only to men or women unless such discrimination is reasonably necessary to the normal operation

of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification;

- g. Employer to prohibit any person from speaking in a language other than English in the workplace unless:
 - i. The employer can show that requiring that employees speak English at certain times is justified by business necessity; and
 - ii. The employer informs employees of the requirement and the consequences of violating the rule.

- 2. If the Agency engages in unfair employment practices as defined above, remedies as set forth in KCC Chapter 12.18 may be applied, in addition to those remedies specified in the Contract or otherwise available at law or equity.

H. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six years after completion of all work under this Contract, the following:

- 1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
- 2. Records, including written quotes, bids, estimates or proposals submitted to the Agency by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit, at any time, the site of the work and the Agency's office to review the foregoing records. The Agency shall provide every assistance requested by the County during such visits. In all other respects, the Agency shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

I. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Agency may be subject to damages, withholding payment and any other sanctions provided for by the Contract and by applicable law.

J. Reporting

- 1. Unless the Agency is a municipal corporation, the Agency entering into a contract or agreement with King County valued at \$25,000 or more shall submit with this Contract a Personnel Inventory Report providing employment data for minorities, females and persons with disabilities.

Subject to the provisions of KCC 12.16.060, the Agency's Personnel Inventory Report shall be effective for two years after the date on which the report was submitted.

2. The Agency entering into a contract with King County valued at more than \$25,000, or contracts that in the aggregate have a value to the Agency of more than \$25,000 should submit an Affidavit of Compliance in the form provided by the County, demonstrating commitment to comply with the provisions of KCC Chapter 12.16 in accordance with paragraph B of this Section XV.

The Agency shall complete the Affidavit of Compliance provided by the County and attach the original, notarized, completed form to this Contract. Subject to the provisions of KCC 12.16.060, the Agency's Affidavit of Compliance shall be effective for two years after the date on which the report was submitted.

K. Fair Housing Protections

The Agency shall comply with the federal Fair Housing Act, Public Law 90-284 (42 USC 3601 et seq.). The Agency shall take necessary and appropriate actions to prevent discrimination in any housing-related project under this Contract, which includes rental housing projects and/or projects that include residential real estate-related transactions, as required by the Federal Fair Housing Act as amended (42 USC 3601) and the Washington State Law Against Discrimination (RCW Chapter 49.60). Residential real estate-related transactions include the making or purchasing of loans or the provision of financial assistance secured by real estate, or the making or purchasing of loans or financial assistance for the purchasing, constructing, improving, repairing or maintaining of a dwelling. Rental housing includes any dwelling that is intended for occupancy as a residence for one or more families by lease, sublease or by grant for a consideration of the right to occupy Premises not owned by the occupant. In addition, except for projects located in incorporated jurisdictions, the Agency shall comply with the applicable provisions of the King County Open Housing Ordinance, codified at Chapter 12.20 of the King County Code, which prohibits practices of housing discrimination against any person on the basis of age, ancestry, color, disability, marital status, national origin, parental status, possession of Section 8 housing assistance, race, religion, retaliation, sex, and sexual orientation.

Projects using federal funds shall also comply with subsections L, M, and N below.

L. Additional Federal Nondiscrimination Requirements

The Agency shall comply with all applicable federal laws prohibiting discrimination, including the following:

1. Presidential Executive Order 11063 as amended and implementing regulations at 24 CFR Part 107;
2. Section 109 of the HCD Act of 1974, as amended (42 USC 5301);
3. The Americans with Disabilities Act (42 USC 1213; 47 USC 155, 201, 218 and 225); and
4. Section 504 of the Rehabilitation Act of 1973 and regulations at 24 CFR Part 8.

M. Prohibited Discriminatory Actions

1. Except where expressly authorized by federal law, the Agency may not, under any program or activity to which this Contract applies, directly or through contractual or other arrangements, discriminate on the grounds of age, color, creed, familial status, marital status, nationality, religion, race, sex, sexual orientation, or the presence of any, physical, mental or sensory disability. Discriminatory actions may include but are not limited to the following:
 - a. Denying any person access to facilities, services, financial aid or other benefits provided under the program or activity;
 - b. Denying any person services due to limited English proficiency;
 - c. Providing any person with facilities, services, financial aid or other benefits, which are different, or are provided in a different form from that provided to others under the program or activity;
 - d. Subjecting any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit under the program or activity;
 - e. Restricting in any way access to or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
 - f. Treating any person differently from others in determining whether the person satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity;
 - g. Denying any person any opportunity to participate in a program or activity as an employee; and
 - h. Failing to design and construct facilities for first occupancy after January 26, 1993 that are readily accessible to and usable by individuals with disabilities and failure to remove architectural and communication barriers that are structural in nature in existing facilities, where such removal can be accomplished without difficulty and expense.
2. The Agency shall not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of age, color, familial status, nationality, race, religion, sex, or sexual orientation; or mental, physical, or sensory disability; or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular age, color, familial status, nationality, race, religion, sex, or sexual orientation; or the presence of any mental, physical, or sensory disability.
3. The Agency, in determining the site or location of housing or facilities provided in whole or in part with funds under this Contract, may not make selections of such site or location which have the effect of excluding individuals, denying them benefits, or subjecting them to discrimination on the grounds of age, sex, marital

status, familial status, religion, race, creed, color, sexual orientation, nationality, or the presence of any sensory, mental or physical disability; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the HCD Act or of the HUD Regulations.

N. Employment Projections

In all solicitations under this Contract, the Agency shall state that all qualified applicants will be considered for employment. The words "equal opportunity employer" in advertisements shall constitute compliance with this Section.

O. No Conflict with Federal Requirements.

As indicated by HUD Notice CPD 04-10, a faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in 42 U.S.C. 2000e-1(a), is not forfeited when the organization receives HUD funding. Faith-based organizations, like any other entity participating in a HUD-funded program, must, however, comply with all the statutory requirements of that particular HUD-funded program. Both the CDBG and HOME Programs contain statutory provisions imposing non-discrimination requirements on all subrecipients, subgrantees or contractors. Religious organizations that believe that certain non-discrimination statutory requirements are substantially burdensome may be entitled to protection under the Religious Freedom Restoration Act [42 U.S.C. 4000bb-3, 4000bb-2(1)] which applies to all federal law and its implementation. Subrecipients, subgrantees, or contractors should be aware that anti-discrimination provisions of Section 109 of the Housing and Community Development Act of 1974, Section 282 of the HOME Investment partnership Act may pose questions of conformance with Title VII of the Civil Rights Act of 1964 and future court rulings could define more specifically the application of these laws to faith-based organizations. In the event that a provision of this Contract is deemed to be in actual conflict with federal law, the conflicting provision in this Contract shall not apply.

XX. AFFIRMATIVE MARKETING

A. Federal Marketing Requirements

Each Agency must adopt affirmative marketing procedures and requirements for projects containing five or more housing units funded with CDBG and/or HOME funds. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. (The affirmative marketing procedures do not apply to families with housing assistance provided by the Public Housing Authority or families with tenant based rental assistance provided with HOME funds.) The County shall annually assess the Agency's affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions.

B. The affirmative marketing requirements and procedures adopted must include:

1. Methods for informing the public, owners, and potential tenants about federal fair housing laws and the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups;

2. Requirements and practices the Agency must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirement (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
3. Procedures to be used by the Agency to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, language interpreters, places of worship, employment centers, fair housing groups, or housing counseling agencies);
4. Records must be kept describing actions taken by the Agency to affirmatively market units and records to assess the result of these actions; and
5. A description of how the Agency shall assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

XXI. NONDISCRIMINATION IN SUBCONTRACTING PRACTICES

Projects using federal funds shall comply with the following requirements:

A. Federal Requirements

In soliciting subcontractors to supply goods or services for the activities under this Contract, the Agency shall comply with 24 CFR § 85.36(e) as amended if the Agency is a municipal corporation or an agency of the State of Washington, and 24 CFR § 84.44(b)(1)-(5) if the Agency is a nonprofit corporation. In accordance with these regulations, the Agency shall take all necessary affirmative steps to assure M/WBEs and labor surplus area firms are used as subcontractors when possible. Affirmative steps shall include those actions specified above in this Section of the Contract.

B. Nondiscrimination in Federally Assisted Construction

The Agency shall also require compliance with Presidential Executive Order 11246 as amended and 41 CFR Part 60 regarding nondiscrimination in bid conditions for construction projects over \$10,000.

XXII. SECTION 504 AND AMERICANS WITH DISABILITIES ACT (ADA)

The Agency has completed a 504/ADA Self-Evaluation Questionnaire for all programs and services offered by the Agency (including any services not subject to this Contract) and has evaluated its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, 29 USC 701 et seq.; and the ADA, 42 U.S.C. 12101 et seq. The Agency has completed a 504/ADA Assurance of Compliance. Such Assurance of Compliance is attached to this Contract and is incorporated herein by this reference.

XXIII. ACCESSIBILITY

Any buildings or other facilities designed, constructed, or altered with federal funds pursuant to this Contract are subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151 - 4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Parts 101-19 and subpart 101-19.6 for general type building). When applicable, certain multi-family housing units designed and constructed for first occupancy after

March 13, 1991, with assistance provided under this Contract must comply with the Fair Housing Accessibility Guidelines, 24 CFR Part 100 as amended.

XXIV. SUBCONTRACTS AND PURCHASES

A. Subcontract Defined

“Subcontract” shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term “subcontract” does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

B. Writing Required

Any work or services assigned or subcontracted hereunder shall be in writing and must be approved by the County as provided in Section XIV. The Agency agrees that it is as fully responsible to the County for the acts and omissions of its subcontractors and their employees and agents, as it is for the acts and omissions of its own employees and agents, as defined in Section XVII.C.

C. Required Contract Terms

The Agency shall include the applicable provisions of Sections XVIII, XIX.A-G, XXI and XXII in every subcontract or purchase order for goods or services which are paid for in whole or in part with funds provided under this Contract. The Agency agrees to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services, which relate to the subject matter of this Contract:

“Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employee, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.”

Projects using federal funds must also comply with subsections D, E, F, G and H.

D. Debarred Contractors

The Agency shall not make any award at any time to any contractor, which is debarred, suspended or excluded, from participation in federal assistance programs under Presidential Executive Order 12549, “Debarment and Suspension”.

E. Subcontracting Requirements

An Agency which receives federal funds under this Contract also shall include the following Sections in every subcontract or purchase order for goods and services which are paid in whole or in part with funds provided under this Contract: Sections XVII.B, XVIII.J, XIX.H-I, and XXVII.B; and, if the subcontract is for construction, Sections XXV and XXVI.

F. Federal Procurement Requirements

If the Agency is a municipal corporation or an agency of the State of Washington, it agrees to comply with procurement requirements specified in 24 CFR § 85.36(b) through (g). If the Agency is a nonprofit corporation, it agrees to comply with procurement requirements specified in 24 CFR §§ 84.40 through 84.48 or as otherwise provided in the Project/Program Exhibit. The regulations at 24 CFR § 85.36 (b) through (g) and 24 CFR §§ 84.40 through 84.48, require that all goods and services, irrespective of cost, be procured using a competitive process.

G. Federal Bid Guarantee and Bond Requirements

If the Agency is subcontracting construction work under this Contract, the subcontract shall require for any construction contracts exceeding \$100,000:

1. A bid guarantee from each bidder equivalent to five percent of the bid price;
2. A performance bond from the contractor for one hundred percent of the contract price; and
3. A payment bond from the contractor for one hundred percent of the contract price. The Agency may, at its discretion, require any of these requirements on construction contracts of less than \$100,000. The specific requirements for bid guarantees and bonds are at 24 CFR § 84.48(c) for nonprofit corporations and 24 CFR § 85.36(h) for municipal corporations and agencies of the State of Washington.

H. Failure to Comply is Default

Failure by the Agency to require compliance with the above terms and conditions in subcontracts shall constitute a breach of this Contract.

XXV. LABOR STANDARDS

For projects using HOF funds, Agencies shall comply with the following:

A. State Prevailing Wages

Unless projects have federal funds, all construction work must be paid at the state prevailing wage levels.

For projects using CDBG and/or HOME funds, Agencies shall comply with Subsections B and C.

B. Davis-Bacon Requirements

All construction work funded in whole or in part under this Contract must be performed in accordance with the Davis-Bacon Act, as amended (40 USC sections 276(a)-276(a)(5)), the Copeland "Anti-Kickback" Act, as amended (40 U.S.C. 276(c)) and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as further prescribed at 29 CFR Parts 1, 3, 5, 6 and 7.

For projects assisted with CDBG funds, this section shall not apply to construction or rehabilitation of residential property designed for residential use by fewer than eight units. For projects assisted with HOME funds, this Section shall not apply to

rehabilitation of rental property consisting of less than 12 units. A copy of the current Davis-Bacon wages must be included in all construction bid specifications, contracts, and/or subcontracts over \$2,000.

C. Use of Volunteers

The Agency shall obtain the written approval of the County prior to allowing any volunteers to perform construction work on a project assisted under this Contract.

XXVI. EMPLOYMENT OPPORTUNITIES ON ASSISTED CONSTRUCTION PROJECTS

A. Section 3 Requirements

The work to be performed under this Contract may be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. Section 3 Criteria for Capital Projects

As set forth in the HCD Plan, Section 3 regulations found at 24 CFR § 135.38 apply to all Project/Program Exhibits which meet all three of the following criteria:

1. The Project/Program Exhibit must include \$200,000 or more in total HUD funds from one or more program years;
2. The Project/Program Exhibit must include construction or rehabilitation work as a task that will be funded in full or in part with the HUD funds; and
3. The construction or rehabilitation work that will be funded must have a contract value, which exceeds \$100,000. That actual contract value of construction or rehabilitation work is the determining factor, not a cost estimate.

Additionally, Section 3 regulations are applicable to Project/Program Exhibit(s), which do not initially meet the above criteria but which are amended so as to add funds or change the activities for which the funds are used. Section 3 regulations do not apply to projects that include \$200,000 or more in HUD funds when the funds are being used for acquisition and/or professional services only and not for construction or rehabilitation work.

XXVII. CONFLICT OF INTEREST

A. King County Code Chapter 3.04 Compliance.

The Agency shall comply with the provisions of KCC Chapter 3.04. Failure to comply with any requirement of KCC Chapter 3.04 shall be a material breach of Contract and may result in termination of this Contract pursuant to Section XI and subject the Agency to remedies stated therein or otherwise available to the County at law or in equity. This section shall not apply to an Agency that is a municipal corporation which has adopted an employee code of ethics; provided that nothing in this section is intended to contract away such an Agency's obligation to comply with any KCC Chapter 3.04 provision that applies independent of this Contract.

B. No Preferential Treatment

The Agency agrees that it will not attempt to secure preferential treatment in dealings with the County by offering any valuable consideration, thing of value, or gift, whether in the form of services, loan, thing, or promise, in any form, to any County official or employee. The Agency acknowledges that if it is found to have violated the prohibition found in this paragraph its current contracts with the County shall be cancelled and it shall not be able to bid on any County contract for a period of two years.

C. Current and Former County Employees

The Agency acknowledges that, for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in a contract or a grant that was planned, authorized or funded by a County action in which the former County employee participated during County employment. The Agency shall identify, at the time of offer, current or former County employees involved in the preparation of proposals or the anticipated performance of work if awarded the Contract. Failure to identify current or former County employees involved in the transaction may result in the County's denying or terminating the Contract. After Contract award, the Agency is responsible for notifying the County's project manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

All Projects using federal funds shall also comply with the following subsection:

D. No Conflict of Interest

The agency agrees to abide by the provision of 24 CFR §§ 84.42 and 570.611, which include (but are not limited to) the following:

1. The Agency shall maintain a written code or standards of conduct that shall govern the performance of its officer, employees or agents engaged in the award and administration of contracts supported by Federal funds; and
2. No employee, officer or agent of the Agency shall participate in the selection or in the award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the County, the Agency or any designated public agency.

E. Copyright

If this contract results in any copyrightable material or inventions, the County reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or

otherwise use and to authorize others to use, the work or materials for governmental purposes.

XXVIII. NO BENEFIT TO OWNERS AND DEVELOPERS OF ASSISTED HOUSING

No agency, developer or sponsor (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or nonprofit (including a Community Housing Development Organization when acting as an owner, developer or sponsor) may occupy a CDBG, HOME, HOF, RAHP or CX-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a CDBG, HOME, HOF, RAHP or CX-assisted unit as the project manager or maintenance worker.

XXIX. POLITICAL ACTIVITY PROHIBITED

A. No Partisan Activity

None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

All Projects using federal funds shall also comply with the following subsection:

B. Certification Regarding Lobbying

The Agency certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject

to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XXX. BOARD OF DIRECTORS

- A. If the Agency is incorporated, it must have an active, legally constituted board of directors in accordance with the requirements of RCW Chapters 23B or 24, to the extent applicable.
- B. The requirements of this Section that follow apply only to the agencies that qualify as non-profit organizations under United States Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501(C)(3).
 - 1. The Agency shall have a Board of Directors that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency. For the purposes of this Section, a relative is defined as husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, domestic partner and child of domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this Section, as if the employee and domestic partner were married.
 - 2. The Board of Directors shall meet regularly.
 - 3. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501(C)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

XXXI. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

A. Equipment Purchase

The Agency agrees that equipment purchased with Contract funds at a cost of \$5,000 per item or more and identified in an exhibit as reimbursable, is upon its purchase or receipt the property of the Agency, County, and/or federal, and/or state government, as specified in the exhibit.

B. Maintenance of Equipment

The Agency shall be responsible for all such equipment, including the proper care and maintenance.

C. Equipment Returned

The Agency shall ensure that all such equipment shall be returned to the appropriate government agency, whether federal, state or County, upon written request of the County.

D. Right of Access

The Agency shall admit the County's Property Management Officer to the Agency's premises for the purpose of marking such property with appropriate government property tags.

E. Maintenance of Records

The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

F. Disposition of Equipment

Projects using federal funds shall also comply with the following requirement. If the Agency ceases to use equipment purchased in whole or in part with CDBG funds for the purpose described in this Contract, or if the Agency wishes to dispose of such equipment, the disposition shall be determined under the provisions of 24 CFR § 570.502(b)(3)(vi), if the Agency is a nonprofit corporation and 24 CFR § 570.502(a) and 24 CFR § 85.32(e) if the Agency is a municipal corporation or an agency of the state of Washington. The Agency agrees that it will contact the County for instructions prior to disposing of, surplus, encumbering or transferring ownership, of any equipment purchased in whole or in part with federal funds.

XXXII. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing; and directed to the Chief Executive Officer of the Agency and the Director of the County Department of Community and Human Services. Any time within which a party must take some action shall be computed from the date that said party receives the notice.

XXXIII. PROPRIETARY RIGHTS

- A. The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the Agency. The Agency agrees to and does hereby grant to the County, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract. The foregoing license shall not apply to existing training materials, consulting aids, checklists and other materials and documents of the Agency, which are modified for use in the performance of this Contract.
- B. The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency, which are modified for use in the performance of this Contract.
- C. The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use in the performance of this Contract.

XXXIV. CONTRACT AMENDMENTS

Either party may request changes to this Contract. Proposed changes, which are mutually agreed upon, shall be incorporated by written amendments to this Contract. Budget revisions approved by the County pursuant to Section V are not required to be incorporated by written amendment.

XXXV. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

The Agency shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper.

If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Agency may notify the County, which may waive the recycled paper requirement. The Agency shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Contract.

XXXVI. ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

XXXVII. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION

The Agency and any subcontractor agree, when applicable, to abide by the terms of Chapters 26.44, 69.54, 70.02, 70.96A, 71.05, 71A.10, 71A.14, 71A.18, 71.20, 71.24, and 71.34 of the Revised Code of Washington, rules and regulations promulgated thereunder, the Basic Interagency Contract between the Department of Social and Health Services and King County, as amended, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

XXXVIII. SUPPLANTING

Any federal CDBG or Homeless Housing and Services (2163) Funds made available under this Contract to provide public (human) services shall not be utilized by the Agency to reduce or replace the local financial support currently being provided to public (human) service programs. Homeless Housing and Services funds cannot be used in the place of existing housing operations or services funds.

XXXIX. DRUG FREE WORKPLACE CERTIFICATION AND OTHER FEDERAL REQUIREMENTS

A. Drug-Free Workplace Certification

The Agency certifies that it is in compliance with the Drug-Free Workplace Act of 1988 (42 USC 701) and regulations set forth at 24 CFR part 24, subpart F.

B. Other Federal Requirements

The absence of mention in this Contract of any other federal requirements that apply to the award and/or expenditure of the federal funds made available by this Contract is not intended to indicate that those federal requirements are not applicable to Agency activities. The Agency shall comply with all other federal requirements relating to the

expenditure of federal funds, including but not limited to, the Hatch Act (5 USC. Chapter 15) regarding political activities.

XL. CONSTITUTIONAL PROHIBITION

Funds Not Used for Religious Purposes. In accordance with the First Amendment of the United States Constitution, Article 1, Section 11 of the Washington State Constitution, and separation of church and state principles, as a general rule, funds received under this Contract may not be used for religious activities. Except where otherwise allowed by federal law, the following restrictions and limitations apply to the use of CDBG and HOME funds:

- A. An Agency may not engage in inherently religious activities, such as worship, religious instruction or proselytization, as part of the assistance funded under this Contract. If the Agency conducts religious activities, the activities must be offered separately, in time and location, from the assistance funded under this Contract, and participation must be voluntary for the beneficiaries of the assistance;
- B. In performing under this Contract, the Agency shall not discriminate a program beneficiary or prospective program beneficiary on the basis of religion or religious belief; and
- C. CDBG and HOME funds may be used to rehabilitate or construct facilities and housing owned by primarily religious organizations only to the extent those structures are used for conducting eligible activities consistent with 24 CFR § 570.200, 24 CFR § 92.257, and 24 CFR § 576.23.

XLI. CONFIDENTIALITY

The Agency agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

XLII. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)

Terms used in this Section shall have the same meaning as those terms in the Privacy Rule, 45 CFR Parts 160 and 164.

- A. Obligations and Activities of the Agency
 - 1. The Agency agrees not to use or disclose protected health information other than as permitted or required by law.
 - 2. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the protected health information that it creates, receives, maintains or transmits on behalf of the covered entity as required by 45 CFR Part 164, Subpart C.
 - 3. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract.

4. The Agency agrees to report to King County any use or disclosure of protected health information not allowed under this contract, or security incident, within two days of the agency's knowledge of such event.
5. The Agency agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Agency on behalf of King County, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
6. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
7. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
8. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of King County, available to the Secretary, in a reasonable time and manner for purposes of the Secretary determining King County's compliance with the privacy rule.
9. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

B. Permitted Uses and Disclosures by Business Associate

The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by King County or the minimum necessary policies and procedures of King County.

C. Effect of Termination

1. Except as provided in paragraph C.2 of this Section, upon termination of this Contract, for any reason, the Agency shall return or destroy all protected health information received from King County, or created or received by the Agency on behalf of King County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Agency. The Agency shall retain no copies of the protected health information.
2. In the event the Agency determines that returning or destroying the protected health information is infeasible, the Agency shall provide to King County notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Agency shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Agency maintains such protected health information.

XLIII. PROMISSORY NOTE, DEED OF TRUST AND COVENANT

The Agency agrees that funding provided under this Contract for the acquisition, construction, improvement and/or rehabilitation of real property (Premises) owned by the Agency is a loan from the County to the Agency. The Agency agrees to promptly execute a promissory note, deed of trust and covenant (if applicable), in a format approved by the County, if required in a Project/Program Exhibit. The Agency agrees that for real property, which is leased by the Agency and assisted under this Contract, the Agency shall obtain a covenant from the owner of the real property in a form approved by the County, if required in a Project/Program Exhibit.

XLIV. ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE

The Agency shall at all times comply with all applicable federal, state, and local laws, statutes, rules and regulations relating to relocation of those persons and households residing at the Premises prior to occupancy by tenants. The Agency shall be solely responsible for the cost of all relocation benefits required by law.

Capital Projects using federal funds shall also comply with the following subsection.

Federal Acquisition and Relocation Requirements: Implementation of any project provided for in this Contract will be undertaken so as to minimize involuntary displacement of persons, businesses, nonprofit organizations, or farms to the greatest extent feasible. The Agency shall comply with the following:

- A. Any acquisition of real property by the agency for any activity assisted under this Contract shall comply with the Uniform Relocation Act and 49 CFR Part 24;
- B. Any displacement of persons, businesses, nonprofit organizations, or farms occurring as the result of acquisition of real property assisted under this Contract shall comply with the Uniform Relocation Act, at 24 CFR Part 42 and 49 CFR Part 24 as amended, and the County's Residential Anti-displacement and Relocation Assistance Plan required by federal regulations at 24 CFR § 570.606(c), and adopted by the County Council as part of the HCD Plan. The Agency shall comply with the Regulations pertaining to costs of relocation and written policies, as specified by the King County Residential Anti-displacement and Relocation Assistance Plan; and
- C. When any lower-income dwelling units are demolished or converted to a use other than a lower-income dwelling unit, in connection with an activity assisted under this Contract with federal funds, the units must be replaced on a one-for-one basis. Lower-income dwelling units are defined as a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent for existing housing as established by HUD and published annually, pursuant to 24 CFR Part 888. The Agency must comply with the one-for-one replacement of housing requirements of Section 104(d) of the HCD Act, as amended. The implementing regulations are found at 24 CFR Part 42, and for CDBG funds at 24 CFR § 570.606.

XLV. MISCELLANEOUS PROVISIONS

- A. Severability

If any term or provision of this Contract or an application of any term or provision to any person or circumstance is invalid or unenforceable, the other terms or provisions of this Contract, or the application of the term or provision to persons or circumstances other

than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

B. Cumulative Remedies

No provision of this Contract precludes the County from pursuing any other remedies for the Agency's failure to perform its obligations.

C. No Third Party Beneficiaries

This Contract is for the benefit of the named parties only, and no third party shall have any rights hereunder.